Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate	)	RM-8117, RM-8030,
Future Development of SMR Systems	)	RM-8029
in the 800 MHz Frequency Band	)	
	)	
and		
	)	
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
800 MHz SMR	)	

To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
ON THE FURTHER NOTICE OF PROPOSED RULE MAKING

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: _____

Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

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SUMMARY

The American Mobile Telecommunications Association, Inc. endorses generally the FCC's proposal to redefine the 800 MHz SMR licensing structure to promote the continued viability of traditional SMR systems and an enhanced competitive position for wide-area SMR operators. AMTA supports the FCC's proposal to allocate the 200 contiguous SMR frequencies in the 861-865 MHz band for wide-area SMR systems in four 50 channel blocks, but suggests that these areas be defined by BEAs rather than MTAs or BTAs. It suggests certain modifications of the proposed wide-area construction requirements to encourage the inclusion of rural subscribers and rural SMR operators in the service on a timely basis, and to deter anti-competitive efforts to impede the implementation of these systems. The Association also describes, but defers taking a position on, the issue of mandatory versus voluntary migration of traditional licensees from the band assigned for wide-area service.

AMTA opposes the use of competitive bidding procedures for any systems in the 800 MHz band as inconsistent with Congressional intent in providing the Commission with auction authority. It supports the adoption of a protected service area for all 800 MHz trunked licensees, not only non-wide-area incumbents in the 861-865 MHz band. The Association recommends a simultaneous reallocation of the General Category band for SMR usage and elimination of SMR inter-category sharing for future applicants. It also outlines the advantages and disadvantages of site-specific versus geographic based licensing for traditional SMR [illegible]

[redacted]

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ON THE FURTHER NOTICE OF PROPOSED RULE MAKING

1. The American Mobile Telecommunications Association, Inc ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.[1/] The instant Notice details the FCC's most recent proposal for future licensing of the 800 MHz Specialized Mobile Radio ("SMR") Service, including both wide-area and more localized systems. The task is formidable. The SMR and all other CMRS industries are moving into an era of unprecedented opportunity -- and competition. The decisions reached in the instant proceeding will

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[1/] Further Notice of Proposed Rule Making, PR Docket No. 93-144, 9 FCC Rcd. ___, FCC 94-271, 59 FR 60112 (November 22, 1994)("FNPR" or "Notice").

largely determine the extent to which the SMR community will be able to participate successfully in this environment. Further, the regulatory structure adopted must be applied to an already heavily populated industry; must properly balance the interests of somewhat disparate participants in that industry; and must incorporate those requirements mandated by the statutory amendments to the wireless regulatory scheme.[2/]

2. AMTA believes that the framework outlined in the Notice is, in general, a workable vehicle for achieving the FCC's ambitious objective of establishing "a flexible regulatory scheme for the 800 MHz SMR service that will allow for more efficient licensing, eliminate unnecessary regulatory burdens on both existing and future licensees, and thereby enhance the competitive potential of SMR services in the mobile services marketplace. Notice at ¶ 2. However, AMTA has also determined, based on extensive discussions within the Association and with other interested parties, that the legitimate business objectives of various industry participants cause them to hold divergent views on certain key aspects of the Commission's proposal.

3. Since the release of the FNPR, AMTA has been working diligently to develop consensus positions among members of the SMR industry wherever possible. AMTA's Small Business Operators Council, Regulatory Committee and an ad hoc group representing large and small SMR operators have each met to discuss the complex issues included in the FNPR, and their findings have been circulated. In addition, AMTA distributed a lengthy document to its entire membership that outlined various proposals

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[2/] Omnibus Budget Reconciliation Act of 1993 , Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993)("Budget Act").

for future 800 MHz licensing, including the Commission's, and sought member comment. AMTA has also met repeatedly with other associations to seek common ground on these issues.

4. While a clear industry consensus on all issues has not been achieved at this time, there has been significant progress and discussions continue. AMTA is persuaded that further delineation of the advantages and disadvantages of various aspects of the regulatory structure under consideration will lead to more thoughtful agency decision making. Therefore, the instant Comments include both recommendations and further discussion of the issues, as appropriate.

I. INTRODUCTION

5. AMTA is a nationwide, non-profit trade association dedicated to the interests of what heretofore had been classified as the private carrier industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country, and represent the substantial majority of those private carriers whose systems have been reclassified as CMRS.[3/]

[3/] See, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, FCC 94-31, 9 FCC Rcd 1418 (1994)("CMRS 2nd R&O"), Erratum, 9 FCC Rcd 2156 (1990); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Third Report and Order, FCC 94-212, 9 FCC Rcd ___ (adopted August 9, 1994, released September 23, 1994)("CMRS 3rd R&O"), Erratum, 9 FCC Rcd ___ (1994).

6. The instant Notice is of particular interest to AMTA's 800 MHz members, both those that offer more traditional, localized service and those that have begun to migrate to a wider-area, typically digital system approach employing extensive frequency reuse. Both of these segments of the SMR industry will be profoundly affected by the Commission's decisions in the instant proceeding. Those members who operate in other bands are also distinctly interested in certain aspects of this proposal, in particular the FCC's determinations regarding wide-area systems and the agency's competitive bidding procedures. Thus, the Association has a significant interest in the outcome of this proceeding.

II. BACKGROUND

7. The SMR service is generally considered to be one of the FCC's least publicized success stories. The industry was created by the Commission in 1974, in the same proceeding in which the FCC approved 800 MHz allocations for other private land mobile services and authorized the cellular service.[4/] The spectrum allocated specifically to the 800 MHz SMR service in that and a subsequent proceeding[5/] totalled 14 MHz, or 280 channels. 200 of the 280 channels are in the contiguous spectrum between 861 and 865 MHz, while the remaining 80 channels are interleaved with frequencies assigned to other private land mobile services in the band between 856 and

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[4/] Memorandum Opinion and Order, Docket No. 18262, 51 FCC 2d 945, aff'd NARUC v. FCC, 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976).

[5/] Second Report and Order, Docket No. 79-191, 90 FCC 2d 1281 (1982), recon. Memorandum Opinion and Order, 95 FCC 2d 477 (1983).

860 MHz. SMRs also have co-primary access to the 150 General Category channels for either conventional or trunked use along with all other private land mobile eligibles. Additionally, the FCC has authorized "inter-category" sharing of available 800 MHz channels among classes of eligibles.[6/] Thus, in addition to the 280 channels designated for this service and the 150 channels in the General Category pool, operators of qualified SMR systems have been permitted to employ unused spectrum assigned on a primary basis to other classes of eligibles to expand fully loaded systems.[7/]

8. By any standard, the 800 MHz SMR industry has used this spectrum to advance the public interest. Service is available in virtually every part of the nation at prices which reflect the highly competitive nature of the two-way wireless industry. The SMR community has adopted numerous technical and operational advances which have enabled it to provide optimal service quality and an array of service offerings to a broad segment of the nation's businesses. SMR systems have helped fuel the country's improved economic condition. With relatively minimal government involvement, the SMR industry has developed into a major component of the burgeoning wireless marketplace. The rules adopted in the instant Notice should allow it to retain or even enhance that position.

9. AMTA has participated actively in previous Commission efforts to craft a regulatory structure for the further development of this industry. In 1992 the

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[6/] See 47 C.F.R. § 90.621(g).

[7/] Non-SMRs are also eligible to acquire unassigned SMR spectrum under essentially the same terms and conditions.

Association submitted a Petition for Rule Making which outlined a "Blueprint" for wide-area licensing of 800 MHz SMR systems.[8/] That Petition was a catalyst for the agency's subsequent Expanded Mobile Service Provider ("EMSP") licensing proposal, the first FCC effort to define an integrated licensing scheme for both wide-area and more traditional SMR systems in this band, and the initial stage of this proceeding.[9/]

10. From AMTA's perspective, the most critical aspect of the EMSP Notice was its endorsement of a streamlined SMR licensing process which provided for wide-area systems covering broad geographic regions. The EMSP approach more closely paralleled the less cumbersome cellular licensing scheme and was expected to facilitate the expeditious implementation of wide-area SMR systems.

11. Although the EMSP Notice attracted broad industry support, intervening legislative activities prompted the FCC to postpone further action on the proposal. On August 10, 1993, Congress enacted the Budget Act in which it amended the statutory delineation of various mobile services. Specifically, Congress directed the FCC to classify all mobile services as either Commercial Mobile Radio Service ("CMRS") or Private Mobile Radio Service ("PMRS"), and to implement licensing schemes that would promote regulatory symmetry among systems providing substantially similar services.

12. The FCC responded to this legislative directive by initiating a multi-stage proceeding in which it has successively defined which services are to be classified as

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[8/] American Mobile Telecommunications Association, Inc. Petition for Rule Making, RM-8117, filed October 26, 1992.

[9/] Notice of Proposed Rule Making, PR Docket No. 93-144, 8 FCC Rcd 3950 (1993) ("EMSP Notice").

CMRS versus PMRS, determined which services in each category are substantially similar to one another, and adopted technical, operational and licensing rules and procedures for both CMRS and PMRS systems which are intended to promote regulatory parity.[10/] Having established the broad framework within which a revised 800 MHz licensing structure must operate, the Commission has now initiated a Further Notice in this proceeding outlining an 800 MHz SMR licensing scheme consistent with the intervening, Congressionally-mandated rule changes and with the anticipated evolution of this industry.

13. At the outset, AMTA must emphasize its continued disagreement with certain FCC interpretations of the directives it was given by Congress. First, as stated in numerous previous proceedings, AMTA is not persuaded that Congress intended the FCC to adopt a definition of CMRS so sweeping as to encompass even the smallest, most rural SMR system, irrespective of its practical ability to provide a service substantially similar to cellular or other so-called "broadband" CMRS systems.[11/] Further, the Association is firmly convinced that Congress did not intend, much less mandate, the use of competitive bidding, or auction, procedures for the assignment of either wide-area or more traditional SMR systems. In AMTA's opinion, the legislation itself, in conjunction with the accompanying report language, evidences a Congressional intent that the Commission employ auctions for the issuance of **new** authorizations in **newly** allocated

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[10/] CMRS 2nd R&O; CMRS 3rd R&O.

[11/] CMRS 2nd R&O at ¶ 90.

services such as PCS.[12/] There is no indication that auctions were to be used for systems such as 800 MHz SMR where virtually all spectrum has already been assigned and licenses are being issued almost exclusively either for the "white space" in wide-area authorizations or to modify in some way the operation of existing, traditional systems. Congress did not intend auctions to be used as a vehicle to recover retroactively the spectrum value of existing systems, but rather to enable prospective licensees to put spectrum to its most valuable use on an expeditious basis. Because the licensing situation in the instant proceeding does not conform to that Congressional objective, there is no statutory basis for assigning either wide-area or other 800 MHz SMR licenses by competitive bidding.

14. Moreover, it should be no surprise that in the robust, competitive SMR environment, not all operators have an identical vision for the future of their businesses, an agreed upon timetable or common roadmap for achieving success, or even a shared definition of what constitutes success. Some have focused on the consolidation of systems and spectrum in broad geographic areas with the objective of implementing more frequency intensive, cellular-like system designs capable of handling significantly greater traffic volume.[13/] Others have opted to retain a more traditional system approach, serving a localized customer base with coverage extensions available primarily through

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[12/] 47 U.S.C. § 309(j); H.R. Rep. No. 111, 103d Cong. 1st Sess. 253 (1993).

[13/] These systems typically follow the Nextel model approved by the FCC in 1991 and further defined in 1993. See Fleet Call, Inc., Memorandum Opinion and Order, 6 FCC Rcd 1533, recon. dismissed, 6 FCC Rcd 6989 (1991); Letter from Ralph A. Haller, Chief, Private Radio Bureau to David Weisman, DA 92-1734, 8 FCC Rcd 143 (1993) ("Weisman Letter").

roaming arrangements.

15. There are also differences in the concerns of rural and urban operators of traditional systems. There is no unused 800 MHz spectrum in urban markets. While SMRs in those areas, like other successful entrepreneurs, would like to expand their operations, they recognize that system growth must come through technology. Their critical concern is that the value of their existing businesses not be diminished by government fiat, particularly by being relegated to second-class spectrum status. By contrast, rural operators want to balance their demand for expansion spectrum in the present and near-term future with the needs of wide-area SMR providers to have sufficient spectrum for longer-term system development.

16. AMTA considers these interests to be segments of a single SMR community -- not separate industries each of which is simply one more component of the wireless marketplace.[14/] In critical respects, the systems in each of these groups are regulatorily intertwined. Most utilize some combination of frequencies from the 280 SMR channels, the 150 General Category and the inter-category pools. Multiple systems operate on a co-channel basis with varying degrees of geographic proximity. Because the original assignments in the band provided channel spacing for frequencies assigned as a single group, numerous unrelated systems employ adjacent channels in every

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[14/] The Department of Justice seemingly agrees with this assessment since it determined that trunked SMR service in the 800 MHz, 900 MHz and 220 MHz bands constituted a single, relevant product market for antitrust purposes. See proposed Final Judgment United States of America V. Motorola, Inc. and Nextel Communications, Inc., Case No. 94-CV-02331 (D.D.C.), filed October 27, 1994, Competitive Impact Statement p. 6.

geographic area. This complex interrelationship among SMR systems in the 800 MHz band dictates an integrated approach to a revised licensing structure. It simply is not possible to treat as unrelated wide-area versus traditional service in this already heavily populated, spectrally integrated band.

17. AMTA is pleased that the FCC has proceeded expeditiously to reactivate its consideration of this matter. As noted in the FNPR, "...in recent years SMR service has evolved into a diverse industry comprised of systems utilizing advanced technologies to provide an array of services." Notice at ¶ 4. The licensing of some of these services still fits relatively comfortably into the existing processing scheme. Other systems, most notably those seeking wide-area authority with frequency reuse, are ill-suited to the existing site and frequency specific authorizations. AMTA has previously advised the Commission of the importance of balancing the different, but not necessarily incompatible, interests of operators providing these various types of service.[15/] While the Association recognizes the difficulty of reconciling certain of these issues to the full satisfaction of all interested parties, AMTA considers adoption of distinct, but complementary, licensing approaches for all 800 MHz systems critical to the continued success of this valuable wireless industry.

III. 861-865 MHZ LICENSING BLOCK

A. Wide-Area Spectrum Blocks

18. AMTA supports the FCC's proposal to designate the 200 SMR Category

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[15/] See, e.g., AMTA Comments in the CMRS 3rd R&O, dated June 20, 1994.

channels from 861-865 MHz ("upper band") for prospective wide-area use. FNPR at ¶ 17. These channels constitute the largest amount of contiguous spectrum now allocated for SMR service. Although the **entire** SMR allocation does not equal the amount of spectrum provided for other CMRS services such as cellular and PCS, this 10 MHz block is at least as large as the smallest, individual broadband PCS authorization. It is, therefore, the best available SMR allocation for those businesses seeking to establish wide-area SMR services. AMTA's support for this proposal is consistent with its comments in other proceedings,[16/] and its ongoing support for a wide-area licensing framework since its "Blueprint" filing in 1992.

19. The Association also supports the Commission's proposal to license upper band channels in four blocks of 50 channels each on a geographic basis, and to permit parties to acquire more than one block per geographic area. FNPR at ¶ 22. This arrangement would permit the aggregation of sufficient spectrum to allow development of viable wide-area systems, while maintaining regulatory flexibility to meet individual market conditions. The Association agrees with the Commission's finding that wide-area blocks should not be so small or so numerous that transaction costs of obtaining block licenses would outweigh potential benefits of wide-area licensing. FNPR at ¶ 21. Four 50 channel blocks appear to strike an appropriate balance between economies of scale and protection of competition within a given geographic area.

20. The FCC's proposed bundle of wide-area "rights" which would be granted to these licensees will help to alleviate the current disparities between 800 MHz SMR

[16/] See AMTA Reply Comments, GN Docket No. 93-252, July 11, 1994.

licensing and other CMRS services such as cellular and PCS. FNPR at ¶¶ 30-31. These other "broadband" services have almost unlimited authority to construct, modify and relocate base station facilities within their licensed geographic areas. If wide-area SMR service is to be considered similar to and competitive with these offerings, it must have equivalent freedom to implement systems that best meet customer demand on a timely basis. This objective will also be furthered by the FCC proposal that any recovered spectrum in the wide-area block revert to the wide-area licensee. Adoption of that provision will prevent further fragmentation of these heavily congested channels, and allow licensees sufficient spectrum for extensive frequency reuse across their geographic areas.

21. The FCC itself notes that "flexibility will be limited by the large number of systems already authorized and operating in the 800 MHz band." FNPR at ¶ 31. However, it is not clear from the FNPR that the Commission is fully cognizant of just how congested these upper band channels are. The frequencies between 861 and 865 MHz constitute the original trunked SMR allocation. Many of these channels have been in use for nearly twenty years, particularly in urban areas. A half-decade of FCC-authorized short-spacing has exacerbated to the congestion on these frequencies.

22. AMTA and various SMR operators have previously submitted data to the FCC identifying the minuscule amount of upper band spectrum still available for licensing **anywhere** in the United States, and have documented its total unavailability in markets of any population density. If the Commission decides to award wide-area licenses, AMTA must remind the FCC that it will be awarding essentially "white space",

rather than useable spectrum. In this respect, the "rights" outlined in the FNPR, such as self-coordination, are largely illusory since they are awarded in a heavily congested spectrum environment. The Association feels it necessary to emphasize again this critical difference between SMR and other broadband services which were or will be granted large amounts of essentially clear spectrum.

23. Finally, the FNPR proposes that "any request for transfer or assignment of an incumbent authorization to the [wide-area] licensee be presumptively considered in the public interest." FNPR at ¶ 31. AMTA agrees that such a presumption is appropriate and may help to speed clearing of upper band channels for wide-area use. However, AMTA requests clarification that incumbent licensees would not be limited to transfers or assignments only to wide-area licensees. Should the Commission decide to adopt this policy, or to include such a presumption in its Rules, the Association urges that it also note that incumbents' transfer or assignment of channels to a third party not be presumed to be contrary to the public interest.

B. Geographic Divisions

24. AMTA remains committed to the concept of geographic licensing across large areas to promote SMR service that is competitive with other broadband CMRS. The current system of site-specific, frequency-by-frequency licensing severely hampers entities seeking to provide efficient wide-area services to business customers and the general public. No other broadband CMRS service is licensed in this manner. A geographic-based license structure will promote competition among wide-area SMR, cellular and broadband PCS by further leveling the regulatory playing field. However,

after prolonged discussion among its members of all sizes, AMTA is not convinced that Rand McNally's Major Trading Area ("MTA") designations are the most effective geographic divisions for use in wide-area 800 MHz SMR licensing.

25. AMTA has previously advocated the use of MTAs for wide-area SMR licensing.[17/] However, while 800 MHz SMR service is included in the Licensing Agreement between Rand McNally and Telocator (now Personal Communications Industry Association), other services in which AMTA members participate, and which are likely to be addressed in future FCC licensing procedures, are not.[18/] In the interest of consistency in licensing among these similar services, AMTA members and the SMR industry as a whole are currently examining other bases for both wide-area and local geographic licensing. See Section IV(B), infra. AMTA intends to provide the FCC with an industry consensus position on this issue in its Reply Comments in this proceeding.

C. Construction Requirements

26. The FNPR outlines the congested state of the upper band in discussing construction requirements for wide-area licensees. FNPR at ¶¶ 44-50. However, in proposing construction and coverage requirements nearly identical to those implemented for PCS, the FNPR fails to consider fully the impact of those requirements on operators already occupying the band. For this reason, AMTA suggests the Commission re-examine certain aspects of its proposal.

27. AMTA supports the Commission's proposal to allow wide-area licensees

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[17/] See, e.g., AMTA Reply Comments, GN Docket No. 93-252, at 16.

[18/] The most notable examples are 900 MHz SMR and 220 MHz service.

five years to construct their systems. FNPR at ¶ 46. This period should be sufficient to construct facilities in any remaining "white space" in the geographic area, and to negotiate with incumbent operators. Further, AMTA supports the use of interim construction requirements to ensure that licensees begin providing service to at least part of their authorized service area on a timely basis.

28. However, the unique condition of this SMR spectrum is not necessarily consistent with construction requirements based solely on population. FNPR at ¶ 48. Since nearly all MTAs are created around a major population center, must of the population of MTAs is located in or near that market. Under the Commission's proposal, wide-area licensees, in many cases, will be able to satisfy construction requirements by providing service only to the metropolitan area of the MTA. Because service in the urban core generally will satisfy the proposed construction requirements, wide-area licensees will not need to extend service into more rural areas and will not need to solicit the participation of non-urban-area operators. At the same time, however, those non-urban incumbent licensees would be "frozen", unable to modify or expand their systems beyond a proposed protected service area without the co-channel wide-area licensee(s)' consent. FNPR at ¶ 37. Under the approach in the Notice, non-urban incumbent operators face the prospect of devalued businesses and declining quality of service to customers.

29. Therefore, to increase the likelihood that rural SMR operators and prospective subscribers to wide-area SMR service will participate in this innovative offering, AMTA suggests that the Commission consider other criteria on which to base

its construction requirements, such as geographic area. These other criteria could be implemented in addition to, or as a substitute for, the population requirements proposed.

30. AMTA also shares the Commission's concern that applicants with a limited ability to provide service may seek wide-area licenses for anti-competitive reasons, such as to block existing wide-area licensees. FNPR at ¶ 49. The Association suggests that one means of preventing such anti-competitive behavior would be to require that wide-area licensees initiate service on a percentage of each fifty-channel block within the specified time. This would prevent a licensee from fulfilling its coverage requirements by constructing a single-channel, high power facility at one or a few high-elevation locations. Multi-channel construction requirements would also ensure that wide-area systems provide efficient service to more customers within the first license term.

D. Treatment of Incumbent Systems

31. As the FNPR notes, the impact of wide-area licensing on incumbent licensees is a crucial issue in this proceeding. FNPR at ¶ 32. In fact, it is this issue which has most sharply divided the SMR industry. While discussions among wide-area and traditional SMR operators continue, AMTA is unable to provide the Commission with an industry consensus position on this issue at this time. Instead, the Association has detailed the arguments in favor of and against mandatory migration of incumbent licensees now operating on upper band channels to other spectrum allocated for SMR use. After review of all comments submitted in this proceeding, any further consensus on this issue will be reflected in AMTA's Reply Comments.

1. Market-driven relocation

32. With few exceptions, traditional SMR operators, most of them small businesses, strongly support the Commission's tentative conclusion that "incumbent SMR systems should not be subject to mandatory relocation to new frequencies." FNPR at ¶ 34. These licensees represent a wide variety of business plans, including those intending to build wide-area systems of their own some time in the future and others seeking to maintain small, primarily dispatch operations providing low-cost service to business customers. These operators recommend continued reliance on market forces to define the future SMR landscape. They are strongly opposed to any mandated clearing of long-used spectrum to accommodate a new licensing scheme.

33. While the FNPR suggests that any mandatory relocation plan would require the wide-area licensee to pay all costs of retuning, most incumbent SMR licensees believe there is no adequate way to compensate system operators and their customers for the true costs and inconvenience of relocation. They are convinced that devaluation of their business is inevitable should they be forced to move to other channels. Moreover, the non-contiguous channel assignment plan used in the upper band would require many traditional five-channel SMR operators to deal with up to four different wide-area licensees. Whether seeking eventually to sell their businesses to a wide-area licensee, to develop a future wide-area system of their own, or to remain a small business serving customer demand as it develops, opponents of mandatory relocation urge the Commission to allow the market, not government decree, to determine the course of their businesses.

2. Mandatory retuning

34. Certain existing wide-area applicants and licensees, those most likely to obtain wide-area geographic licenses, stress that the 10 MHz proposed for wide-area SMR service is already far less than that allocated for cellular and broadband PCS. Nonetheless, the Commission has classified SMR as a service that is actually or potentially competitive with other CMRS services, and therefore subject to comparable regulatory requirements.[19/] Thus, likely wide-area SMR licensees stress the need for clear, contiguous spectrum if SMR is to be competitive with other broadband CMRS services in the real world. They argue that the long-term economic viability of wide-area systems requires clear, contiguous spectrum which can support even more spectrally efficient technologies which are under development today, and which cellular and PCS licensees will be able to employ.

35. Advocates of this approach also assert the a mandatory arrangement is essential because of the imperfect workings of the marketplace. While many have been relatively successful in acquiring spectrum through voluntary transactions, they doubt that they can come to reasonable terms within a reasonable timeframe with all incumbents, regardless of the incentives offered. The marketplace, and individual decisions within it, do not operate purely on the basis of quantifiable, monetary considerations. Individuals elect to sell or retain assets based on a variety of economic and emotional factors. Recalcitrant sellers may not be tempted by an objectively attractive offer, or may delay their decision making for an extended period. In the meantime, wide-area

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[19/] See e.g., CMRS 3rd R&O at ¶ 77.

SMR, with its already fragmented spectrum, will become less and less competitive with the entrenched, dominant cellular service and with emerging PCS services.

36. Proponents of mandatory retuning emphasize that wide-area licensees would pay all costs of retuning, and that traditional SMR operators would not be relocated if equivalent frequencies could not be found elsewhere in the SMR band. They believe that relocated licensees might find themselves in a more technically and operationally compatible environment, assuming the band to which they would migrate permits a more liberal license modification procedure and less extensive short-spacing than is likely to be found on the upper band. Finally, they stress that the value of the entire SMR industry will be enhanced in relation to other CMRS services, and the public interest will be advanced, if wide-area licensees are able to provide efficient service across broad geographic areas, while other licensees continue to expand and develop smaller businesses on the rest of the SMR spectrum.

3. Protected service area

37. AMTA supports the Commission's proposal to ensure a defined protected service area for incumbent SMR systems in the 861-865 MHz band proposed to be reallocated for wide-area SMR systems. Notice at ¶ 40. The Association has repeatedly expressed concern about the adequacy of the FCC's 800 MHz co-channel protection criteria.[20/] While the agency's more recent rule changes have attempted to recover some of the protection lost under earlier short-spacing provisions, today's typical SMR system must tolerate a level of co-channel encroachment that would be unthinkable for

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[20/] See e.g., AMTA's Comments in PR Dockets No. 90-34, 93-60.

any other CMRS service. The most routine system changes are not always possible without the concurrence of numerous short-spaced co-channel licensees -- an untenable situation in a highly competitive marketplace environment.

38. Thus, AMTA is pleased to see the Commission's suggestion that these licensees should be entitled to redeploy frequencies and construct new stations within a defined service area. However, the Association recommends that this proposal be extended to all trunked systems, not just SMRs operating in the 861-865 MHz band. 800 MHz trunked systems, in whatever segment of the band and whether operated for commercial or private purposes, encounter comparable technical constraints. The co-channel protection interference criteria should be the same as well.

39. Further, AMTA recommends against using a fixed-radius to define this protected service area. Such a standard bears little or no relation to real-world system service or interference requirements which are defined by the height and power levels of the stations involved. Therefore, the Association urges the FCC to permit all 800 MHz licensees the flexibility to deploy their authorized channels as long as doing so does not expand the 22 dBμ interference contour of the original facility.

IV. SMR OPERATIONS OUTSIDE THE 861-865 MHz LICENSING BLOCK

40. The previous section addressed issues relating to adoption of an 800 MHz SMR wide-area licensing structure which would facilitate implementation of those systems from both the FCC's and the industry's perspective, However, as noted previously, these matters cannot be considered independent of determinations regarding the future licensing of systems which have not yet elected and which may never elect to

pursue such a system design. Irrespective of the FCC's decision regarding voluntary versus mandatory migration, Commission designation of the 861-865 MHz band for wide-area SMR systems will have a profound impact on SMR licensees and applicants pursuing a more traditional business approach.

A. Spectrum Availability

41. As described above, 800 MHz SMRs currently have access on a primary basis to the 200 contiguous channels at 861-865 MHz and the 80 channels interleaved in the 856-860 MHz band, co-primary use of the 150 General Category channels, and inter-category access to the 100 Business and Industrial/Land Transportation channels. A substantial percentage of SMR operations, and even individual SMR systems, include frequencies from some combinations of these pools. Thus, any change in the eligibility to access or the future use of some segment of this spectrum will have a residual effect on all licensees.

42. In the Notice, the FCC tentatively concludes that non-wide-area SMR operators should be limited prospectively to use of the 80 SMR-designated channels in the 856-860 MHz band.[21/] Notice at ¶ 53. Alternatively, it questions whether they should retain access to some or all General Category spectrum, but presumably not to inter-category sharing rights as currently permitted. Id. The Notice expresses concern that permitting access even to General Category channels might cause SMRs to gravitate toward them in lieu of primary "auctionable" SMR spectrum because the shared use of

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[21/] The Notice specifies that SMR licensees with existing operations on non-primary SMR spectrum will be permitted to continue their operations as currently authorized. Notice at ¶ 52.

these channels by CMRS and PMRS eligibles precludes the FCC from assigning them by competitive bidding. The Commission also suggests that prohibiting or limiting SMR use of these frequencies would increase 800 MHz spectrum availability for non-SMRs.

43. AMTA disagrees. The Association believes that the better approach would be to reallocate the General Category Pool for SMR use exclusively, but eliminate future SMR inter-category use of Business or Industrial/Land Transportation frequencies.[22/] This balancing of spectrum needs is appropriate even under today's relative levels of usage by classes of eligible. It is absolutely essential for successful implementation of the FCC's proposed licensing approach which will result inevitably in the migration of existing SMR operators from the 861-865 MHz band to some other portion of the 800 MHz allocation, whether on a voluntary or mandatory basis. The FCC cannot reasonably reallocate one portion of this band for a different type of licensing scheme without taking appropriate measures to accommodate those who may be displaced by that decision.[23/] Moreover, as discussed below, the rationales advanced in the Notice for restricting traditional SMR licensees from using 800 MHz spectrum beyond the 80 remaining SMR channels are not persuasive.

44. As noted above, it is by no means clear that Congress intended the FCC to employ auctions in the assignment of any 800 MHz spectrum. However, even if

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[22/] SMRs have always been prohibited from accessing 800 MHz Public Safety spectrum. See 47 C.F.R. § 90.621(g)(2).

[23/] Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, GEN Docket No. 90-314, FCC 93-451, 8 FCC Rcd 7700 ¶¶ 141-174 (1993); Third Report and Order, GEN Docket No. 90-314, FCC 94-144, 9 FCC Rcd ___ ¶¶ 175-193 (1994).